

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Raphael Mendez,

Civil No. 14-402 ADM/FLN

Plaintiff-Appellant,

v.

ORDER

Counselor Rosemark, Casemanager
Cosette, John Does at FMC
Rochester, Minnesota et al.,

Defendant-Appellees.

Plaintiff is a civilly committed inmate at the Federal Medical Center (“FMC”) in Rochester, Minnesota. He commenced this action by filing a civil rights complaint, and an application for leave to proceed in forma pauperis, (“IFP”). The matter was referred to a magistrate judge, who recommended that Plaintiff’s IFP application should be denied, and this action should be summarily dismissed, pursuant to 28 U.S.C. § 1915(e)(2)(B). This Court adopted the magistrate judge’s recommendation, (over Plaintiff’s objections), and the action was dismissed. Plaintiff subsequently filed a notice of appeal, together with an application for leave to proceed in forma pauperis, on appeal, which is now before the Court.

A litigant can be granted leave to proceed IFP on appeal upon submitting proof that he or she is unable to pay the filing fee and other costs associated with the appeal. 28 U.S.C. § 1915(a)(1); Fed. R. App. P. 24(a). The litigant must also satisfy the Court that the appeal is taken “in good faith.” 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(3).

Plaintiff’s current IFP application indicates that he is not employed at the institution where he is confined and only has only 86 cents on account to his credit at FMC Rochester. The IFP application also indicates that Plaintiff has no other source of income, and he has no assets

that could be used to pay the filing fee and costs for his appeal. Based on the information furnished in Plaintiff's IFP application, the Court finds that he is financially eligible for IFP status.¹

Although the Court remains fully satisfied that this case was properly dismissed, Plaintiff's IFP application will not be denied for lack of good faith.²

Based upon all of the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiff's application to proceed in forma pauperis on appeal [Docket No. 17], is **GRANTED**.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: August 19, 2014.

¹ The Court notes that Plaintiff is not considered to be a "prisoner" for purposes of the IFP statute, because he is currently detained pursuant to a civil commitment. See 28 U.S.C. § 1915(g); Kolocotronis v. Morgan, 247 F.3d 726 (8th Cir. 2001). Therefore, the fee payment requirements for prisoners, which are set forth at 28 U.S.C. § 1915(b), are not applicable here.

² The Court's "good faith" determination should not be viewed as an endorsement of Plaintiff's appeal.